84-1312

Office-Supreme Court, U.S.
FILED
FEB 15 1985
ALEXANDER L. STEVAS,
CLERK

CASE NO.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

IN RE: PATRICIA S. KACZMAREK,
Petitioner,

ON PETITION FOR WRIT OF PROHIBITION
TO THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT
STATE OF FLORIDA

MOTION FOR LEAVE TO FILE PETITION
AND
PETITION FOR WRIT OF PROHIBITION

GARY G. GRAHAM
P. O. Box 519
Inverness, Fl 32651
904/344-2664
Counsel for Petitioner

QUESTION PRESENTED

Does a state trial court judge deny federally protected due process of law if he refuses to disqualify himself on the basis that his brother is a partner in the law firm representing one of the litigants?

SUPREME COURT OF THE UNITED STATES

IN RE: PATRICIA S. KACZMAREK,

Petitioner

ON PETITION FOR WRIT OF PROHIBITION
TO THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT
STATE OF FLORIDA

MOTION FOR LEAVE TO FILE PETITION

NOW COMES the Petitioner and respectfully moves this Court for leave to file the annexed Petition for Writ of Prohibition under Section 1651 of Title 28, United States Code, directed to Judge Morton Hanlon, Thirteenth Judicial Circuit, State

of Florida, to prohibit him from presiding in civil case number 83-15194 in that Court and for such other and further relief as may be just and proper.

Gary C. Graham
Counsel for Petitioner

January 17, 1984

STATEMENT IN SUPPORT OF MOTION

This is a Petition seeking relief from the refusal of a state court trial judge to disqualify himself from a case wherein his brother is a partner in a law firm representing one of the litigants.

Petitioner, PATRICIA S. KACZMAREK, is a nurse who worked for a nursing agency, Sun State Services, Inc. (hereinafter "SUN STATE").

SUN STATE sued KACZMAREK for breach of a non-competition agreement. KACZMAREK answered that the agreement was unlawful and countersued for defamation related to accusations by SUN STATE that she was "unprofessional". SUN STATE is represented by the law firm of Shackleford, Farrior, Stallings and Evans, P.A. (hereinafter "SHACKLEFORD").

The prosecution of the litigation was proceeding in an orderly fashion until the Honorable John Griffin left the Civil Division of the Thirteenth Judicial Circuit, State of Florida, to preside over cases in the Criminal Division. Judge Griffin was replaced by Judge Morton J. Hanlon and KACZMAREK learned that his brother, David Hanlon, is a senior partner in SHACKLEFORD.

Fearing that Judge Hanlon will be biased, partial, and interested in the litigation because of his relation to David

Hanlon, Petitioner has exhausted every state court procedure available in her unsuccessful attempts to disqualify Judge Hanlon. She believes that her fundamental federally protected constitutional right to a fair, impartial and disinterested judge is being denied and that she is suffering irrepairable injury by the refusal of the judge to disqualify himself. Accordingly, she seeks relief from this Court and respectfully asks permission to file this, her Petition for Writ of Prohibition.

SUPREME COURT OF THE UNITED STATES

IN RE: PATRICIA S. KACZMAREK

Petitioner

ON PETITION FOR WRIT OF PROHIBITION
TO THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT
STATE OF FLORIDA

PETITION FOR WRIT OF PROHIBITION

PERSON AGAINST WHOM RELIEF IS SOUGHT

PATRICIA S. KACZMAREK petitions for a writ of prohibition directed to the Honorable Morton J. Hanlon, Circuit Court Judge, Thirteenth Judicial Circuit, State of Florida, prohibiting him from presiding over the Petitioner's pending civil litigation,

Circuit Court Case Number 83-15194.

REASONS FOR GRANTING EXTRAORDINARY RELIEF

1. The relief sought is not available in any other court for the following particular reasons:

A. Every state court of competent jurisdiction has refused without comment or opinion to grant relief, including the highest state court in which a decision could be had.

B. Prohibition would not lie in either the Federal District Court or the Court of Appeals because it would not be in aid of their respective jurisdictions. Downing v. Davis, 34 F. Supp. 872 (S.D. Miss 1940).

2. The relief sought is not available through the normal appellate process

because irrepairable injury would result from delaying relief until after a trial on the merits in the Circuit Court of the Thirteenth Judicial Circuit, State of Florida.

Petitioner asserts that she has a federally protected due process right to have her trial before a judge whom she does not reasonably fear to be partial and biased. The normal appellate process will not prevent her from being required to attend a trial at which she is in fear that the judge is partial and biased. No ultimate appellate victory can erase or remedy the experience of fear which the court below is insisting upon.

Furthermore, requiring Petitioner to seek relief through the normal appellate process would result in years of delay. If Petitioner is correct on the merits and the judge is required to recuse himself, her

remedy after appeal would be a new trial years after her complaint was originally filed. Her witnesses may no longer be alive, or available, and, if available, may no longer recollect with accuracy their testimony.

Likewise, the Defendants may no longer be alive or in the case of corporate defendants, in existence.

Finally, "Justice must satisfy the appearance of justice." Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).

Assuming Petitioner ultimately obtains a ruling through the normal appellate process, it will only be at the expense of a gross distortion of the appearance of justice.

QUESTION PRESENTED

Does a state trial court judge deny

federally protected due process of law if he refuses to disqualify himself on the basis that his brother is a partner in the law firm representing one of the litigants?

PARTIES

Petitioner seeks prohibition against Morton J. Hanlon, presiding judge in civil case number 83-15194, Circuit Court, Thirteenth Judicial Circuit, State of Florida. The parties to case number 83-15194 are:

SUN STATE SERVICES, INC.	Plaintiff/ Counter-defendant
PATRICIA S. KACZMAREK	Defendant
ALBERT L.J. GRUENSFELDER	Counter-defendant

TABLE OF CONTENTS

	PAGE
Person Against Whom Relief is Sought	1
Reason for Granting Extraordinary Relief	2
Question Presented	4
Parties	5
Table of Contents	6
Table of Authorities	7
Official and Unofficial Reports of Opinions	8
Jurisdiction	8
Constitutional and Statutory Provisions Involved or related to Argument	9
Statement of the Case	11
The Federal Question	15
Argument in Support of Petition	16
Conclusion	24
Certificate of Service	
Appendix	

TABLE OF AUTHORITIES

CASES	PAGE
Downing v. Davis, 34 F.Supp. 872 (S.D. Miss 1940)	2
Duncan f. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968)	16
In re Murchison, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955)	16
Potashnick v. Port City Constuction Co., 609 F.2d 1101, (5th Cir. 1980)	20, 22
Rapp v. Van Dusen, 350 F.2d 806, (3d Cir. 1965)	17
S.C.A. Services, Inc. v. Morgan, 557 F.2d 110 (7th Cir. 1977)	23
United States v. Brown, 539 F.2d 467 (5th Cir. 1976)	17
United States v. Conforte, 457 F.Supp. 641 (D. Nev. 1978)	18
Other Authorities:	
U.S. Const. Amend. XIV	9
28 U.S.C. §455(a), (b)(1), and (b)(5)	9, 19
28 U.S.C. §1651	8

OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS

Every court below has declined to deliver an opinion in support of the denial of relief to the Petitioner.

JURISDICTION

1. On May 16, 1984 the Honorable Morton J. Hanlon executed an Order Denying Second Suggestion for Disqualification of Judge. That order is annexed hereto as Appendix A.

2. The jurisdiction of this Court is invoked under 28 U.S.C. §1651.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED OR RELATED TO ARGUMENT

1. U.S. Const. Amend. XIV, § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. 28 U.S.C. § 455(a), (b)(1) and (b)(5)

§ 455. Disqualification of justice, judge or magistrate.

(a) Any justice, judge or magistrate of the United States shall disqualify himself in any proceed-

ing in which his impartiality might be reasonably questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed facts concerning the proceeding;

. . .

(5) He or his spouse, or a person within the third degree of relationship to an officer, director, or trustee of a party;

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

STATEMENT OF THE CASE

Plaintiff, SUN STATE SERVICES, INC., (hereinafter "SUN STATE") filed a Complaint against Defendant, PATRICIA S. KACZMAREK, (hereinafter "KACZMAREK") in the Circuit Court of the Thirteenth Judicial Circuit, State of Florida on October 24, 1983.

KACZMAREK filed a Counterclaim against SUN STATE and Albert L. J. Gruensfelder (hereinafter "GRUENSFELDER") on November 14, 1983. The presiding judge was the Honorable John P. Griffin.

KACZMAREK proceeded to prosecute discovery, including the taking of fourteen (14) depositions.

On February 15, 1984, Judge Griffin announced at a hearing that he would be moving to the criminal division. On February 22, 1984, KACZMAREK learned that the Honorable Morton J. Hanlon had been assigned to her case and that his brother, David Hanlon, was a partner in the law firm representing SUN STATE and GRUENSFELDER, whereupon:

1. KACZMAREK filed a Suggestion for Disqualification of Judge on or about March 1, 1984.

2. The Suggestion for Disqualification of Judge was denied on March 9, 1984. (See F-1)

3. KACZMAREK filed a Petition for Writ of Prohibition with the Second District Court of Appeal, State of Florida on or about March 16, 1984.

4. The Petition for Writ of Prohibition was denied on May 2, 1984. (See G-1)

5. Pursuant to Fla. R. Civ. P. 1.432 and Fla. Stat. 38.10, KACZMAREK filed a Second Suggestion for Disqalification of Judge Hhereinafter the "SECOND SUGGESTION") on or about April 16, 1984. (See Appendix B). The SECOND SUGGESTION included as a basis for relief, the protection of due process of law provided by the Fourteenth Amendment to the United States Constitution.

6. The SECOND SUGGESTION was denied on May 16, 1984. (See A-1)

7. KACZMAREK filed a Second Petition for Writ of Prohibition with the Second District Court of Appeal on or about June 1, 1984.

8. The Second Petition for Writ of Prohibition was denied on June 11, 1984 (See Appendix C).

9. KACZMAREK filed a Petition for Review by Certiorari with the Florida Supreme Court on July 16, 1984.

10. The Petition for Review by Certiorari was dismissed on July 18, 1984. (See D-1).

11. KACZMAREK filed a Petition for Writ of Prohibition with the Florida Supreme Court on June 21, 1984.

12. The Petition for Writ of Prohibition was denied on August 6, 1984 (See E-1).

THE FEDERAL QUESTION

The federal question sought to be reviewed was raised at the Court of first instance by written argument in the Second Suggestion for Disqualification of Judge. The argument was set forth under a seperate heading captioned "FEDERAL LAW BASIS" (See B-6).

The federal question was raised at the appellate courts by written argument set forth under seperate headings captioned "FEDERAL LAW BASIS". The arguments to the Second District Court of Appeal, State of Florida and to the Florida Supreme Court were identical to the argument to the trial court found at B-6.

ARGUMENT IN SUPPORT OF PETITION

> "The Fourteenth Amendment denies the State the power to deprive any person of life, liberty, or property without due process of law.".

Duncan v. Louisiana, 391 U.S. 145, 147, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

> "A fair trial in a fair tribunal is a basic requirement of due process.".

In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623,99 L.Ed. 942 (1955).

The Murchison Court stated that:

> "... our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a fair judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "Every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear and true ... denies ... due process of law.".

Tumey v. State of Ohio, 273 U.S. 510, 532, 47 S.Ct. 437, 444, 71 L.Ed. 749. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, "justice must satisfy the appearance of justice.". Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13.

> "For the proper administration of justice requires of a judge not only actual impartiality, but also the appearance of detached impartiality.".

Rapp v. Van Dusen, 350 F.2d 806, 812, (3 Cir. 1965).

In United States v. Brown, Fifth Cir., 539, F.2d 467, 469, the Court decided that:

> "Like statements of the principal as to the "appearance of justice" within the fair trial concept are found in many other decisions and have now been

> codified in the new recusal statute (28 U.S.C.A. §455(a) and (b)), which requires mandatory disqualification of a judge "in any proceeding in which his impartiality might reasonably be questioned," or "where he has a personal bias or prejudice concerning a party".". (parenthetical added, emphasis by the court)

Thus it has been stated that:

> "There is no doubt that the right to a fair and impartial judge who has not prejudged a case is guaranteed by the Due Process and Fair Trial clauses of the constitution. See In re Murchison, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955); United States v. Brown, 539 F.2d 467 (5th Cir. 1976). Furthermore, this constitutional right exists apart from the statutory disqualification provisions of Sections 144 and 455 and may be invoked independently in situations where the statutes do not strictly apply.".

United States v. Conforte, 437 F.Supp. 641, 659 (D. Nev. 1978).

Those statutes do not strictly apply to the Petitioner's case because it is a

civil case in a state court. Accordingly, the Petitioner, independently of 28 U.S.C.A. §455, invokes her federal constitutional right to a judge who she does not reasonably fear to be biased, partial and interested in the outcome of her case.

She does, however, rely on 28 U.S.C.A. §455(a) and (b) as persuasive authority because she agrees with the Brown Court that they are a codification of the fair judge and fair trial concepts included within the protection of the due process and fair trial clauses of the federal constitution.

Based on §455(a) and (b) the federal courts have exhaustively considered the requirement for a judge to disqualify himself where a relative is a member of a law firm involved in litigation over which the judge is presiding.

The Fifth Circuit has held that a

judge must disqualify himself when a relative of the third degree of relationship is a partner in a law firm appearing in the case. Potashnick v. Port City Construction Co., 609 F.2d 1101, 1113 (5th Cir. 1980).

In so holding, the Court stated that, "... the protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system.". Potashnick at 1111.

The Court stated that:

> "Underlying our decision to disqualify Judge Hand is the assumption that a partner will always have some interest which could be affected by the outcome of a proceeding handled by his law firm. However, a recent advisory opinion interpreting Canon 3C of the Code of Judicial Conduct suggests that apart from any interests involved, the partner status of the judge's relative by itself is sufficient ground for disqualification. Titled "Disqualification in a

case in which a relative is employed by a participating law firm," the opinion notes the distinction between law firm associates and partners, and states:

> We believe the following conclusions find support in the Code (of Judicial Conduct). A judge is disqualified and should recuse if a relative within the third degree of relationship to the judge or his spouse (a) is a partner in a law firm appearing in the case, or (b) will profit or lose from the judge's action in the case either financially or otherwise, for example, the reputation of the firm would be significantly affected by the litigation. Advisory Committee on Judicial Activities, Advisory Opinion No. 58 (1978) (emphasis added). The use of "or" in the quoted language above indicates that either an interest or partner status of the relative will require disqualification. The advisory opinion, in conformity with our holding in this case, advocates automatic disqualification of a judge based on his relation to a law firm partner. While this result may seem harsh and inconvenient, we believe it will serve

> to promote public confidence in the integrity and impartiality of the judiciary in general and of the participating judge in particular."

Potashnick at 1114.

Accordingly, the Judge in Potashnick was required to disqualify himself because "when a partner in a law firm is related to a judge within the third degree, that partner will always be "known by the judge to have an interest that could be substantially affected by the outcome" of a proceeding involving the partner's law firm.". Potashnick at 113.

Petitioner submits that Judge Hanlon's insistence in presiding over her case when he knows that his brother, David Hanlon, has an interest that could be substantially affected by the outcome, denies her of her fundamental constitutional right to a fair and impartial judge.

Even more directly on point, the Seventh Circuit has held that a Judge must disqualify himself when his brother is a partner in a law firm appearing in the case. SCA Services, Inc. v. Morgan, 557 F.2d 110, 118 (7 Cir. 1977).

In so holding, the court reasoned that:

> This appearance of partiality begins with the natural assumption that brothers enjoy a close personal and family relationship and, consequently, would be inclined to support each other's interests. When one brother is a lawyer in the firm representing a party before his brother who is the judge in the case, the belief may arise in the public's mind that the brother's firm and its clients will receive favored treatment, even if the brother does not personally appear in the case.

SCA Services at 116

Accordingly, Petitioner submits that her fear that David Hanlon's firm and its clients may receive favored treatment is entirely reasonable, and that Judge Hanlon's refusal to disqualify himself

therefore denies her of her fundamental constitutional right to a fair and impartial judge.

CONCLUSION

The right to a fair and impartial judge, not reasonably feared to be partial, biased or interested in the litigation is a right protected not only by federal statute but also by the due process clause of the Fourteenth Amendment.

A litigant may reasonably fear that a Judge will be partial, biased, and interested in the litigation when his brother is a partner in a law firm involved in the litigation.

Therefore, a state trial court judge denies federally protected due process of law if he refuses to disqualify himself on the basis that his brother is a partner in the law firm representing one of the liti-

gants.

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant her Petition for Writ of Prohibition directing the Honorable Morton J. Hanlon to disqualify himself as presiding judge in civil case number 83-15194 and prays for such other and further relief as may be just and proper.

Respectfully submitted,

GARY G. GRAHAM
P. O. Box 519
Inverness, FL 32651
904/344-2664

Gary G. Graham

GARY G. GRAHAM
Counsel for Petitioner

CASE NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

IN RE: PARTICIA S. KACZMAREK,

Petitioner

ON PETITION FOR WRIT OF PROHIBITION
TO THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT
STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 1985, three copies of the Motion for Leave to File Petition and Petition for Writ of Prohibition were mailed postage prepaid to the Honorable Morton J. Hanlon, Hillsborough County Courthouse, Tampa, Florida 33602 and six copies to LEE

D. GUNN, IV. Shackleford, Farrior, Stallings & Evans, P.A., P. O. Box 3324, Counsel for SUN STATE SERVICES, INC., and ALBERT L. J. GRUENSFELDER. I also certify that all parties required to be served have been served.

GARY G. GRAHAM
P. O. Box 519
Inverness, FL 32651
904/344-2664
Counsel for Petitioner

Appendix A

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY. CIVIL ACTION

SUN STATE SERVICES, INC., d/b/a ALWAYS CARE,

Plaintiff,

vs. CASE NO. 83-15194
DIVISION A

PATRICIA S. KACZMAREK,

Defendant.

_____/

ORDER DENYING SECOND SUGGESTION FOR DISQUALIFICATION OF JUDGE

THIS CAUSE came to be heard on Friday, May 11, 1984, upon Second Suggestion for Disqualification of Judge submitted by PATRICIA S. KACZMAREK. This Court having heard the argument and testimony of counsel, reviewed its file, and being otherwise fully apprised in the premises, it is thereupon

ORDERED AND ADJUDGED that the Second

Suggestion for Disqualification of Judge be and the same is hereby denied.

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this 16th day of May, 1984.

_____
CIRCUIT JUDGE

Conformed copies to:

GARY G. GRAHAM, ESQ.
LEE D. GUNN, IV, ESQ.

Appendix B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT, IN AND FOR HILLSBOROUGH COUNTY, CIVIL DIVISION

SUN STATE SERVICES, INC., d/b/a ALWAYS CARE, Plaintiff,	CASE NO.: 83-15194
vs.	DIVISION: "A"
PATRICIA S. KACZMAREK, Defendant.	

SECOND SUGGESTION FOR DISQUALIFICATION OF JUDGE

COMES NOW the Defendant by and through her undersigned attorney and pursuant to Fla. R. Civil P. 1.432 and Florida Statute 38.10 moves and suggests that the Honorable Morton J. Hanlon be disqualified in the above sytled cause.

FACTS

The facts upon which this Motion is based are as follows:

1. Plaintiff and Counterdefendant are represented by the law firm of Shackleford, Farrior, Stallings and Evans, P.A.

2. David Hanlon, Esquire is an attorney and a partner in the law firm of Shackleford, et. al.

3. David Hanlon is the brother of the Honorable Morton J. Hanlon.

4. The above styled cause includes a five count Counterclaim against Plaintiff asking for punitive damages.

5. Over four months of pretrial discovery have taken place, including the taking of 14 depositions.

6. Defendant fears that she will not receive a fair trial in the Court where the suit is pending on account of the prejudice of the judge of said Court in favor of the adverse party and has filed an Affidavit with the Court so stating.

7. Defendant first learned through

her attorney of the relationship between Judge Hanlon and David Hanlon on or about February 22, 1984.

ARGUMENT IN SUPPORT OF MOTION

STATE LAW BASIS

Fla. Stat. 38.10 requires a judge to disqualify himself whenever a party makes and files an Affidavit that he fears that he will not receive a fair trial on account of the prejudice of the judge in favor of the adverse party.

The judge is duty bound to disqualify himself if the facts alleged by the moving party would prompt a reasonably prudent person to fear that he would not get a fair trial. Brewton v. Kelly, 166 So.2d 834, 836 (2 DCA 1964). Any interest of a person related to a judge within the prohibited degree which would create or tend to create prejudice against the defendant is suffi-

cient to disqualify a judge. HARRISON v. WHITEHURST, 146 So. 589 (Fla. 1933)

It is a party's right to have a judge free from any obvious source of possible unconscious bias. AETNA LIFE & CASUALTY COMPANY v. THORN, 319 So.2d 82 (3DCA 1975)

Cannon 3C(1) and 3C(1)(d)(iii) Code of Judicial Conduct set forth reasonable criteria for disqualification of a judge.

Florida case law has not been found which directly decides the issue of whether Fla. Stat. 38.10, Cannon 3C(1), and Cannon 3C(1)(d)(iii) are a legally sufficient basis for disqualifying the judge when he has a brother who is a partner in the law firm representing the adverse party.

However, 28 U.S.C. §455(a) is almost identical to Cannon 3C(1) and 28 U.S.C. §455(b)(5)(iii) is identical to Cannon 3C(1)(d)(iii). Looking to federal case

law for guidance we find that the federal courts, on the basis of 28 U.S.C. §455(a) and 28 U.S.C. §455(b)(5)(iii), have decided that where a judge has a brother who is a partner in the law firm representing the adverse party that a reasonable basis for the finding of the appearance of partiality exists and that disqualification is required. SCA SERVICES INC. v. MORGAN, 557 F.2d 110, 116 (7th Cir. 1977). This is true even if the brother does not personally appear in the case. Id at 116.

The Fifth Circuit has held that:

> "... when a partner in a law firm is related to a judge within the third degree, that partner will always be "known by the judge to have an interest that could be substantially affected by the outcome" of a proceeding involving the partner's law firm.".

Potashnick v. Port City Const. Co., 609 F.2d 1101, 1113 (5th Cir. 198) (sic).

If, under Federal law our district

court judges have held that having a brother w..o is a partner in the adversary law firm is a reasonable basis for fear of partiality, then certainly Defendant's less learned fear must also be reasonable.

FEDERAL LAW BASIS

"The Fourteenth Amendment denies the State the power to deprive any person of life, liberty, or property without due process of law.". Duncan v. Louisiana, 391 U.S. 145, 147, 20 L. Ed. 491, 495 (1968).

Defendant is in jeopardy of losing her freedom to work for whomever is willing to hire her if Plaintiff wins its Complaint which is an action in equity and will be tried at the bench.

Defendant will lose her property interest in restitution for damages caused by Plaintiff's alleged defamation and extortion if her Counterclaim is lost at jury

trial.

"It is too well established to require extended discussion that due process is not an inflexible concept. Rather, its requirements are determined in particular instances by indentifying the interests of the individual and society.". O'Connor v. Donaldson, 422 U.S. 563, 580, 45 L. Ed.2d 396, 410 (1975).

Defendant argues that to require her freedom and property interests to be tried before a judge whose brother is a partner in the law firm representing her adversary is fundamentally unfair and a denial of due process.

David Hanlon's financial and non-financial interests are clearly apparent. His firm will obviously generate higher fees and a corresponding increase in partner's shares if Plaintiff's Complaint is not dismissed. It is also obvious that

he will share in the good will and reputation of the firm should it defeat Defendant's Counterclaim.

"When one brother is a lawyer in the firm representing a party before his brother who is the judge in the case, the belief may arise in the public's mind that the brother's firm and its clients will recieve (sic) favored treatment even if the brother does not personally appear in the case.". SCA SERVICES, INC. v. MORGAN, 557 F.2d 110, 116 (7th Cir. 1977).

"Justice must satisfy the appearance of justice.". Offutt v. United States, 348 U.S. 11, 14 75 S.Ct. 11, 13 (1954).

To require Defendant to have her freedom and property interest decided before a judge whose brother is a partner in the law firm representing her adversary does not satisfy the appearance of justice, is not fundamentally fair, and denies her feder-

ally protected right to due process of law.

RELIEF SOUGHT

1. Disqualify the Honorable Morton J. Hanlon in the above styled cause.

2. Assign a new judge to the cause.

Respectfully submitted:

GARY G. GRAHAM
P. O. Box 519
Inverness, FL 32651
904/344-2664
Attorney for Defendant

AFFIDAVIT AND VERIFICATION

COMES NOW the Defendant, PATRICIA S. KACZMAREK, who being first duly sworn does depose and say that she has read the foregoing SECOND SUGGESTION FOR DISQUALIFICATION OF JUDGE and that to the best of her information and belief that the facts contained therein are true.

FURTHER AFFIANT SAYETH NOT.

PATRICIA S. KACZMAREK

SWORN TO and subscribed before me this

_____ day of April, 1984.

Notary Public

My commission expires:

Appendix C

C-1

June 11, 1984

PATRICIA S. KACZMAREK, Petitioner,	)	
v.	)	Case No. 84-1180
THE HONORABLE MORTON J. HANLON, Respondent.	)	

Counsel for petitioner having filed a second petition for writ of prohibition, upon consideration, it is

ORDERED that said petition is hereby denied.

A TRUE COPY
ATTEST:

WILLIAM A. HADDAD, CLERK
SECOND DISTRICT COURT OF APPEAL

By: _____
Chief Deputy Clerk

c: Gary G. Graham
Lee Gunn
Attorney General

Appendix D

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, JULY 18, 1984

PATRICIA S. KACZMAREK,	**	
Petitioner,	**	CASE NO. 65,587
vs.	**	District Court of
THE HONORABLE MORTON J. HANLON,	**	Appeal, 2d Dis-
Respondent.	**	trict - No. 84-1180

It appearing to the Court that it is without jurisdiction, the Petition for review is hereby dismissed.

No Motion for Rehearing will be entertained by the Court.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By:

Deputy Clerk

cc: Hon. William A. Haddad, Clerk
Hon. James F. Taylor, Jr., Clerk
Hon. Morton J. Hanlon, Judge
Gary G. Graham, Esquire
Lee Gunn, Esquire
Hon. Jim Smith

Appendix E

SUPREME COURT OF FLORIDA

Monday, August 6, 1984

PATRICIA S. KACZMAREK, **

Petitioner, ** CASE NO. 65,471

vs. **

THE HONORABLE MORTON J. HANLON, **

Respondent. **

Upon consideration of the Suggestion for Writ of Prohibition, it is ordered by the Court that said suggestion be and the same is hereby denied.

BOYD, C.M., ADKINS, MCDONALD, EHRLICH and SHAW, JJ., Concur

A TRUE COPY

ATTEST:

Sid J. White
Clerk Supreme Court

By:

Deputy Clerk

cc: Gary G.Graham, Esquire
Hon. Morton J. Hanlon, Judge
Lee Gunn, Esquire
Hon. Jim Smith

Appendix F

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY, CIVIL ACTION

SUN STATE SERVICES, INC., d/b/a ALWAYS CARE,

Plaintiff,

vs.

PATRICIA S. KACZMAREK,

Defendant.

CASE NO. 83-15194

DIVISION 'A'

ORDER DENYING SUGGESTION FOR DISQUALIFICATION OF JUDGE

This cause came to be heard on March 8, 1984 on the Suggestion for Disqualification of Judge submitted by Defendant/Counter-Plaintiff, PATRICIA S. KACZMAREK, seeking to disqualify the Honorable Morton J. Hanlon in the above-styled cause and assign a new Judge to the cause. The Court has reviewed its file and the Affidavits filed March 8, 1984 in support of the Sug-

gestion and being otherwise fully apprised in the premises, it is thereupon

ORDERED AND ADJUDGED, that the Defendant/Counter-Plaintiff's Suggestion for Disqualification of Judge be and the same is hereby denied.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida this 9th day of March, 1984.

MORTON J. HANLON
Circuit Judge

Copies furnished:

Lee d. Gunn, IV, Esquire
Gary G. Graham, Esquire

Appendix G

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

May 2, 1984

PATRICIA S. KACZMAREK, Petitioner,	)	
v.	)	CASE NO. 84-563
HONORABLE MORTON J. HANLON, Circuit Judge. Thirteenth Judicial Circuit, Respondent.	)	

Upon consideration, it is

ORDERED that Petitioner's petition for writ of prohibition is hereby denied. It is further

ORDERED that petitioner's motion for leave to file supplemental affidavits is hereby denied.

A TRUE COPY
ATTEST:

CLERK, DISTRICT COURT OF APPEAL
SECOND DISTRICT

c: Gary G. Graham
Charles Corces, Jr.
Hon. Morton J. Hanlon
James F. Taylor, Jr., Clerk